

## FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In re

Assessment and Collection of Charges for  
 FCC Proprietary Remote Software Packages,  
 On-Line Communications Service Charges,  
 and Bidder's Information Packages in  
 Connection With Auctionable Services

WT Docket No. 95-69

## REPORT AND ORDER

Adopted: July 21, 1995

Released: July 21, 1995

By the Commission:

## I. Introduction

1. In this *Report and Order*, we amend Part 1 of the Commission's Rules to establish a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and for bidder information packages. We conclude that assessment of these charges is reasonable and necessary to recoup the Commission's costs for providing such services and products. Specifically, we will assess the following fees to bidders and other interested parties:

- \* \$2.30 per minute for access via a 900 number telephone service to the Commission's Wide Area Network (FCC WAN) system that will enable users to bid electronically from remote locations and access licensing databases.
- \* \$175.00 for each remote bidding software package.
- \* No charge for the first bidder information package requested, and a \$16.00 fee for each additional package that is subsequently requested by the same party.

## II. Background

2. The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, authorized the Commission to award licenses by competitive bidding where mutually exclusive applications for initial licensing are received for subscriber-based services for compensation. Under this authority, the Commission, to date, has conducted three auctions for Personal Communications Service (PCS) licenses.<sup>1</sup> In previous Commission auctions,

<sup>1</sup> The three PCS auction conducted thus far are: (1) the Nationwide Narrowband PCS auction, held from July 25 through July 29, 1994; (2) the Regional PCS Narrowband auction, held October 26 through November 8, 1994; and (3) the broadband PCS A and B block auction, held December 5, 1994, through March 13, 1995. All three of these auctions were conducted as simultaneous multiple round auctions. In a simultaneous multiple round auction, auction

remote electronic bidding was provided by Business Information Network (BIN). Bidders electing to bid electronically from remote locations (i.e., not at the FCC auction site) paid BIN a fee for the remote bidding software and an on-line computer access charge. The fee covered BIN's costs to develop and provide remote bidding access.

3. Due to the experience gained from these three auctions, the Commission has developed its own remote electronic access system that utilizes Wide Area Network or WAN technology. This system (FCC WAN) would allow bidders and other interested parties to file applications electronically, bid electronically, access auction round results, and query FCC licensing databases from their personal computers from remote locations. The Commission has also developed a number of proprietary software applications to support the remote electronic access system. Bidders and other interested parties would utilize a 900 number telephone service to access the FCC WAN system. The Commission has incurred significant costs in developing this remote electronic access system. Such costs include: infrastructure design and implementation; software development and testing; and other administrative/personnel costs.

4. On May 16, 1995, we adopted a *Notice of Proposed Rulemaking (Notice)*<sup>2</sup> seeking comment on a proposed schedule of fees to be assessed in future auctions for access to certain on-line computer services, and for obtaining proprietary bidding software as well as multiple bidder information packages. In order to recoup our costs, we proposed to charge a fee to bidders and other interested parties for access to the FCC WAN system and for obtaining the proprietary bidding software needed to make use of the system's electronic bidding functions. We also proposed recouping some of the printing and production costs associated with providing bidder information packages to prospective auction participants. Specifically, we indicated that parties would continue to receive one complimentary bidder information package, but suggested charging a fee for additional packages that are requested.

5. We also observed that under government regulations any funds received from the sale of materials, software, or services must go directly to the U.S. Treasury. See 31 U.S.C. § 3302(b); 69 Comp. Gen. 260, 262 (1990). We noted that the Independent Offices Appropriation Act of 1952, as amended (IOAA), 31 U.S.C. § 9701, permits the government to impose fees and charges for services and things of value. The IOAA authorizes agencies to prescribe regulations establishing charges for products and services provided by an agency. The charges must be fair and must be based on the costs to the government, the value of the service or product to the recipient, the public policy or interest served, and other relevant facts. See 31 U.S.C. § 9701(b). In addition, we indicated that the Office of Management and Budget (OMB) has issued policy guidelines on use of fees in Circular A-25 (OMB Circular),<sup>3</sup> which was recently revised. We noted that the revised OMB Circular, encourages the assessment of fees for government-provided products and services, and provides that agencies must establish fees based on either a "full cost" or "market price" analysis.

6. More specifically, we proposed in the *Notice* to calculate our fees on the basis of

---

participants submit bids on specific licenses in each round of the auction. The auction closes when there are no new bids during a bidding round on any of the offered licenses. See *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994), 59 Fed. Reg. 22,980 (1994).

<sup>2</sup> WT Docket No. 95-69, 10 FCC Rcd 7066 (1995), 60 Fed. Reg. 26,860 (1995).

<sup>3</sup> See *FPC v. New England Power Co.*, 415 U.S. 345, 349-51 (1974) (citing the OMB Circular).

"market price"<sup>4</sup> rather than utilizing a "full cost" pricing analysis.<sup>5</sup> In particular, we proposed to utilize prevailing price methodology to determine the fees for the FCC WAN system use, the proprietary bidding software, and the additional bidder information packages. We proposed the following fees: (1) \$4.00 per minute for access via a 900 number to the FCC WAN system; (2) \$200.00 for each remote bidding software package; and (3) \$16.00 for each additional bidder information package (including postage) requested beyond the one complimentary copy that is made available. We sought comments on these charges, and on comparable market prices for similar products and services that are offered to the public.

7. BellSouth Corporation (BellSouth), Rural Telecommunications Coalition (RTC) and AirTouch Paging (AirTouch) filed formal comments and National Paging & Personal Communications Association (NPPCA) and Kennedy-Wilson International (KWI) filed informal comments by letter in response to the *Notice*.

### III. Discussion

8. BellSouth questions whether the Commission can assess fees for its auction-related services under IOAA, when Section 309(j)(8)(B) of the Communications Act already authorizes the Commission to recover the cost of conducting auctions from auction revenues. We conclude that assessing fees for use of the Commission's FCC WAN system as described above is fully consistent with our competitive bidding obligations under the Communications Act and with other laws and regulations that govern fees. See 47 U.S.C. § 309(j)(8)(B); 31 U.S.C. § 9701(a). Assessing a fee to bidders using certain on-line computer services and bidding software is a reasonable and efficient means of recovering the costs associated with developing, maintaining, enhancing, and upgrading this important system and its companion software. Indeed, our proposal supports a congressional goal set forth in the IOAA, which is that "each service or thing of value provided by an agency . . . to a person . . . be self-sustaining to the extent possible." See 31 U.S.C. § 9701(a). Moreover, contrary to BellSouth's suggestion, nothing in Section 309(j)(8)(B) prohibits the Commission from imposing fees on auction participants under the IOAA.

#### A. On-Line Computer Access Charges.

9. Comments. BellSouth, RTC, and AirTouch oppose the Commission's proposal to establish on-line access charges by comparing the FCC WAN system with the costs associated with access to Westlaw and Lexis-Nexis services, claiming the comparison is invalid. RTC contends that the fee for 900 service should be based upon "full cost" and not "market price." In addition, BellSouth and NPPCA assert that there is no alternative to remote electronic bidding procedures. Additionally, NPPCA claims there is already a fee to file applications electronically.

10. Decision. After considering the record, we will charge \$2.30 per minute for access to the FCC WAN system for purposes of bidding electronically, reviewing other applications (e.g., FCC Form 175 or FCC Form 600 applications), and obtaining available licensing database information. We emphasize, however, that we will not charge a user a fee for accessing this system for the purpose of filing a short or long-form application electronically. There will be a clear delineation between services for which on-line access fees will be charged and services

---

<sup>4</sup> "Market price" means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service. See OMB Circular at 58 Fed. Reg. 38,145.

<sup>5</sup> "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. See OMB Circular at 58 Fed. Reg. 38,145.

for which no on-line access fees will be charged. Users who download from the FCC's electronic bulletin board or from the Internet software specific to a service for which we intend to charge on-line access fees will receive clear notification that execution of this software will result in on-line access fees. In addition, when a caller executes software specific to a service for which we intend to charge on-line access fees, there will be a grace period, free of charge to the caller. During the grace period, the caller will be advised of the associated pricing, basic program content, sponsor information, and provided the option to disconnect without being charged. Charges to the caller will not begin until the grace period has ended. Instructions on downloading and executing software specific to a particular service will be made available by Public Notice prior to the availability of that service.

11. In arriving at this \$2.30 fee, we considered that the FCC WAN system will provide services that are similar to both the electronic bidding capabilities previously offered by BIN and to database services provided by Westlaw or Lexis-Nexis. For previous auctions, the cost for on-line electronic bidding through BIN was \$23.00 per hour, which equals \$.38 per minute (rounded). The average cost associated with access to on-line database services such as Westlaw or Lexis-Nexis is \$4.23 per minute.

12. While our new remote electronic bidding system is similar to BIN, which charged \$23.00 per hour, FCC WAN system access to the Commission's licensing databases is more like the services provided by Westlaw or Lexis-Nexis. Both Westlaw and Lexis-Nexis provide on-line database access for research purposes to legal and other research professionals. We have therefore averaged the costs of these two types of services to arrive at a fee of \$2.30 per minute for on-line access to the FCC WAN system. BellSouth and AirTouch argue that the Commission should use other information service providers such as CompuServe, Prodigy, Internet and America On-line as comparisons in determining a price per minute for access to the FCC WAN system. According to the commenters, these particular services range in price from \$10.00 to \$30.00 per month for limited access and \$3.00 to \$10.00 per hour for special services. These providers market their products and services to the general public, however, and their fees obviously reflect the high volume of users that are serviced by them. By comparison, the Commission's auction and licensing databases are of interest to a relatively small number of potential users. Westlaw or Lexis-Nexis, however, do service a small number of users with information that is akin to the licensing database information we plan to offer. Consequently, their pricing provides a more relevant comparison for establishing our fees here.

13. We note that OMB guidelines provide that the price of the government-provided service must be adjusted to reflect the "level of service and quality of the good or service" when compared to a similar commercial service. OMB Circular at 58 Fed. Reg. 38,145. In this regard, we believe it is reasonable to charge a higher per-minute fee for our remote bidding system than was charged by BIN because of the enhanced bidding functionality of the FCC WAN system. Specifically, electronic bidding via the FCC WAN system is expected to be faster and more efficient<sup>6</sup> than BIN. Bidders will have the option of uploading bids from a file that they have created off-line, which will reduce the time required to submit and verify bid submissions. Also, bidders will be able to develop round results files based on their individual needs. In addition to remote bidding and round results, the system also will provide for access to the Commission's licensing databases (i.e., to locate and review other applications). Moreover, the FCC WAN system permits applications to be filed electronically (e.g., the FCC Form 175 and the FCC Form

---

<sup>6</sup> Our FCC WAN system is demonstrably faster than the BIN system used in previous auctions, according to our test results. For example, using BIN, the average amount of on-line time for the Regional Narrowband auction was 16 minutes, 37 seconds per bidding round whereas the average amount of time using the new system in a mock Regional Narrowband auction was 12 minutes, 26 seconds per bidding round (i.e., using a comparison of 30 licenses).

600).

14. In addition, we reject RTC's argument that charging for 900 number service should be based on "full cost" instead of "market price." First, OMB has given us the discretion to choose either methodology. Second, based on our examination of the two methodologies, we conclude that application of a "market price" approach is more practical and efficient for our purposes here. In this regard, we note that the Commission will incur costs of approximately \$700,000 for one year of service for the expanded telephone cabling required to implement the Commission's on-line bidding system.<sup>7</sup> This figure alone, however, does not reflect all of the cost components to be included within OMB's definition of "full cost." Attempting to apportion "full cost" to individual auctions, which will each vary in duration, number of bidders and number of licenses, is administratively unworkable. Thus, we conclude that the "full cost" methodology is inappropriate in this context. This analysis answers BellSouth's concerns that we have not provided any estimate of Commission costs. We reiterate that market price remains the only viable methodology in establishing a fee for 900 service. Likewise, AirTouch's assertion that a \$.15 to \$.20 per minute charge for 900 service would recoup the Commission's costs is an attempt at the "full cost" recovery methodology, which we have declined to use.

15. Finally, we are not persuaded by BellSouth's or NPPCA's argument that there is no alternative to remote electronic bidding procedures and therefore no fee should be charged for this service. We note that bidders may continue to place bids through a 800 telephone number service free of charge.<sup>8</sup> In addition, contrary to NPPCA's belief, we have not established a fee for electronic filing of the FCC Form 175. In order to encourage auction participants to file their short-form applications electronically, as noted above, we do not plan to charge for this particular use.

#### **B. Auction Bidding Software.**

16. **Comments.** BellSouth, RTC, and Airtouch generally argue that there are a number of comparable software packages on the market that are substantially cheaper than the \$200.00 fee proposed by the Commission for its bidding software package. They provided names of various computer companies, computer programs and protocols, as well as various dollar amounts in support of their arguments.

17. **Decision.** After reviewing the comments and alternative prices suggested, we have decided to assess a fee of \$175.00 for the remote bidding software package made available to each user on the FCC WAN system. We will not, however, charge for software that is necessary for users to file applications electronically on the FCC WAN system. Also, we will not charge for software that is needed for users to access the Commission's licensing databases (although as discussed *supra*, FCC WAN users will be charged \$2.30 per minute for actually accessing the Commission's licensing database). We base our \$175.00 price on the BIN

---

<sup>7</sup> The *Notice* pointed out that the General Services Administration ("GSA") was in the process of making arrangements to add 900 service to the Federal Telecommunications System ("FTS") 2000 contract, which is the government-wide telephone system. The *Notice* should have additionally mentioned that point-to-point telephone cabling upgrades were also added to the FTS contract. Since release of the *Notice*, installation of the expanded telephone cabling has been ordered but addition of the 900 service is pending and will not be added until this *Report and Order* has been adopted and released.

<sup>8</sup> As in previous auctions, bidders still will have the option of placing their bids from remote locations via an 800 telephone number service at no charge. Round results information also will be available to bidders over the Internet and on an FCC electronic bulletin board at no charge.

bidding software which was made available to bidders in previous Commission auctions for a \$200.00 charge. We will reduce this fee by \$25.00, however, because our system does not include a communications component that was provided as part of the BIN software package. Specifically, the \$25.00 reduction represents the cost of certain technical protocols that are necessary for remote electronic bidders and other interested parties to access the Commission's remote electronic system.<sup>9</sup>

18. **AirTouch** argues that computer software programs such as Procomm, Telix, Crosstalk and SLIP PPP are appropriate comparisons to the FCC remote bidding software and should be used in determining the market price of our bidding software. For two reasons, we do not believe these software packages are "price comparable" to the bidding software we plan to offer. First, the programs cited by AirTouch are produced for large numbers of users whereas our software is targeted to a small group of users. Second, these programs are more limited in scope and function than the FCC's software. Specifically, the cited programs are communications and technical protocols only whereas the FCC's software package is a more sophisticated logic-based program that will enable users to submit and withdraw bids electronically.

#### **C. Bidder's Information Package.**

19. **Comments.** None of the commenting parties challenge the methodology used to calculate the \$16.00 cost for each additional bidder information package. AirTouch nevertheless opposes a charge for additional bidder information packages, and claims it will be difficult to enforce the policy. KWI, on the other hand, states the Commission should charge \$50.00 to \$100.00 for bidder information packages to ensure they are distributed to persons with a serious interest in the auction process.

20. **Decision.** We conclude that it is both fair and reasonable to provide one complimentary bidder information package to each person or entity, and to charge \$16.00 for each additional package (including postage) requested by the same person or entity. The \$16.00 charge is based on the average direct costs incurred by the Commission to duplicate, bind and mail such packages.

21. We observe that nothing prevents a recipient of a complimentary bidder information package from making additional copies at his or her own expense. We are unpersuaded that charging for additional bidder information packages violates the public interest or will be unduly burdensome to enforce, as AirTouch suggests. We also reject KWI's suggestion that we charge \$50.00 to \$100.00 for bidder information packages since we think such charges would not be consistent with OMB guidelines.

#### **D. Payment of Fees Methodology.**

22. **Comments.** None of the commenting parties object to the proposed inclusion of the FCC WAN on-line access charges on the user's long distance telephone bill. Moreover, none of the commenters express any opposition to having the fees for the bidding software and the bidder information packages collected by credit card or cashier checks. KWI suggests expanding the payment method to include personal and corporate checks.

23. **Decision.** Charges for on-line access to the FCC WAN system will be included in

---

<sup>9</sup> Such technical protocols are available "off the shelf" and can be purchased for approximately \$25.00. Examples of these protocols are Trumpet, NetManage Chameleon and Wollongong Pathway Access.

the form of 900 number service charges on each user's long distance telephone bill. Each user will pay its long distance telephone company directly for these charges. As for bidding software and additional bidder information packages, we will permit payment by credit card and cashier's check. Further, we agree that personal or corporate checks should be permitted and will permit payment in this manner as long as such checks sufficiently identify the payor. All checks should be made payable to the "Federal Communications Commission" or "FCC." The Commission contracts with an auctioneer for each auction, and it is the auction contractor that will be responsible for administering payments of the bidding software and additional bidder information packages. Bidders may obtain the FCC's bidding software and bidder information packages from the FCC's auction contractor. Specific instructions for purchasing the software and bidder information packages will be made available by Public Notice prior to the start of each auction.

#### IV. Procedural Matters

24. Pursuant to the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1165, 5 U.S.C. § 601, *et seq.* (1981)), the Commission attached an Initial Regulatory Flexibility Analysis (IRFA) as Appendix A to the Notice in WT Docket No. 95-69. Written comments on the IRFA were requested. The Commission's Final Regulatory Flexibility Analysis is as follows:

A. *Need and Purpose of the Action.* This rulemaking proceeding is taken to implement the Commission's establishment and collection of fees for the Commission's proprietary remote software packages, on-line communications service charges, and bidder's information packages in connection with auctionable services. The rules specifically set forth the amounts that are to be paid in connection with bidding for auctionable services. The objective of this proceeding is to collect the necessary amounts through the fees being adopted, with the funds going to the U.S. Treasury.

B. *Issues Raised in Response to the Initial Regulatory Flexibility Analysis.* There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

C. *Significant Alternatives Considered and Rejected.* All significant alternatives have been addressed in this Report and Order.

D. *Description, Potential Impact, and Number of Small Entities Involved.* Because the Commission will provide proprietary remote software packages, on-line communications services, and bidder's information packages directly, the fees assessed and collected will recover the Government's costs. While the number of small entities impacted by these fees is unknown, any such impact is likely to be insubstantial. Moreover, the Commission has provided alternative remote access options free of charge.

25. For further information on the assessment and collection of the charges established by the rules adopted herein, contact Bert Weintraub, Wireless Telecommunications Bureau, Auctions Division, at (202) 418-1316.

## V. Ordering Clause

26. Accordingly, **IT IS ORDERED** that pursuant to the authority of Sections 4(i) and (j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 303(r), and 309(j), as well as the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. § 9701, Part 1 of the Commission's Rules, 47 C.F.R. Part 1, IS **AMENDED** to assess and collect fees in connection with auctionable services as set forth in the Appendix, effective upon publication in the federal register. Pursuant to 5 U.S.C. § 553(d)(3), we conclude that "good cause" exists to have the rule amendments set forth in this *Report and Order* take effect immediately upon publication in the federal register. The Commission's next auction is presently scheduled to commence on August 29, 1995, and short-form applications for that auction are due on July 28, 1995.<sup>10</sup> In order to provide for a smooth transition to the new computer system and software discussed in this *Report and Order*, it is necessary to institute our fee schedule prior to the start of this upcoming auction.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

---

<sup>10</sup>See Public Notice, DA 95-1420, released June 23, 1995.



## Appendix

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

### Part 1 -- Practice and Procedure

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Sections 1.1181 and 1.1182 are added to Subpart G to read as follows:

#### **§ 1.1181 Authority to prescribe and collect fees for competitive bidding-related services and products.**

Authority to prescribe, impose, and collect fees for expenses incurred by the government is governed by the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. § 9701, which authorizes agencies to prescribe regulations that establish charges for the provision of government services and products. Under this authority, the Federal Communications Commission may prescribe and collect fees for competitive bidding-related services and products as specified in Section 1.1182 of this subpart.

#### **§ 1.1182 Schedule of fees for products and services provided by the Commission in connection with competitive bidding procedures.**

Product or Service	Fee Amount	Payment Procedure
On-line remote access (900 Number Telephone Service)	\$2.30 per minute	Charges included on customer's long distance telephone bill
Remote Bidding Software	\$175.00 per package	Payment to auction contractor by credit card or check (Public Notice will specify exact payment procedures.)
Bidder Information Package	First package free; \$16.00 per additional package (including postage) to same person or entity	Payment to auction contractor by credit card or check (Public Notice will specify exact payment procedures.)